HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No.23573 OF 2005

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Between:

Oil & Natural Gas Corpn. Ltd.,
Rajahmundry Asset,
Rajahmundry,
rep. by its Executive Manager-cum-
Asset Manager.

..... Petitioner

AND

Sri Rajarajeswari Military Hotel,
rep. by its Proprietor,
Nallamelli Satyanarayana Reddy,
Ramachandrapuram & others

.....Respondents

:: O R D E R ::

Counsel for the petitioner : Shri Kakara Venkata Rao

Counsel for Respondent Nos.1 & 2 : Shri K.S. Murthy with
Shri M.S.Ramachandra Rao

Counsel for Respondent No.3 : None.

3rd November, 2006

Per G.S.SINGHVI, C.J.

This is a petition for quashing order dated 27-4-2005 passed by District Judge, East Godavari at Rajahmundry, whereby he allowed the petition filed by respondent No.1, Sri Raja Rajeswari Military Hotel under Section 11 of the Arbitration and Conciliation Act, 1996 (for short, 'the Act') and directed Regional Director, SRBC, Chennai to appoint an arbitrator to go into the dispute between respondent No.1 and the petitioner Corporation with an observation that if the arbitrator is not appointed within 30 days, then the applicants (respondent Nos.1 and 2 herein) shall be at liberty to move the court through an interlocutory application for naming an arbitrator.

The Facts:

Respondent No.1 is engaged in catering and house keeping business. It entered into a contract with the petitioner Corporation for catering and house keeping services at the rig site belonging to the latter. The period of contract was two years commencing from 18-5-2000. For successful execution of the contract, respondent No.1 submitted bank guarantee in a sum equivalent to 7.5% of annual contract value per DSA. Vide letter dated 15-5-2002, the Corporation extended the term of contract up to 17-8-2002. During the extended term of contract, General Manager (D) & HDBG, K.G.Project, Rajahmundry, vide his letters dated 9-6-2002 and 12-6-2002 informed respondent No.1 that some persons were not satisfied with its services. Respondent No.1 is said to have submitted explanation, after which, the concerned authority imposed penalty of Rs.1,000/-.

After sometime, the competent authority of the Corporation further extended the term of contract by three months. During the currency of

the second extended period, General Manager (M & M), ONGC Limited, K.G. Project terminated the contract on the premise that those working at the rig site stopped taking the food.

Respondent No.1 represented to the authorities of the petitioner Corporation to refer the dispute to an arbitrator, but instead of accepting its request, the concerned authorities decided to revoke the bank guarantee. At that stage, respondent No.1 filed a petition under Section 11 of the Act and prayed for issue of a direction for appointment of arbitrator.

In the counter filed by General Manager (M&M), ONGC Limited, it was averred that extension of the contract was not indicative of good performance of the applicant (respondent No.1 herein). According to him, extension was necessitated because the Corporation had not been able to make alternative arrangement. It was further pleaded that as soon as the alternative arrangement was made, the Corporation terminated the applicant's (respondent No.1) contract.

The learned District Judge referred to the pleadings of the parties and judicial precedents on the subject and opined that it will be proper to direct Regional Director, SRBC, Chennai to appoint an arbitrator to resolve the dispute between the parties.

We have heard learned counsel for the parties. Clause XIII(A) of the Catering and House Keeping Contract entered into between the petitioner Corporation and respondent No.1, which has bearing on the decision of this petition reads as under:

"**XIII. ARBITRATION:**

(A) <u>IF IN CASE THE CONTRACT VALUE IS LESS THAN Rs.1.00 CRORES:</u>

Except where otherwise provided in the contract all questions and disputes relating to the meaning of the terms and conditions and instructions hereinbefore mentioned and

as to quality of service or scope of performance or as to any other question, claim, right or thing whatsoever, in any way arising out of or relating to the contract, instructions or conditions or otherwise concerning the service or execution or failure to execute the same during stipulated/extended period or after completion or abandonment thereof shall be referred to the sole arbitrator or the person appointed by Regional Director, SRBC, Chennai at the time of dispute. It will be no objection for any such appointment that the arbitrator so appointed is a CORPORATION employee and/or he is a shareholder of the CORPORATION.

The arbitrator to whom the matter is originally referred being transferred or vacating his office or being unable to act for any reason, the Regional Director, SRBC, Chennai shall appoint another person to act as arbitrator in accordance with the terms of the contract. Such person shall be entitled to proceed with reference from the stage at which it was left by his predecessor.

Subject as aforesaid the provisions of Arbitration & Conciliation Act, 1996 or any statutory modification or re-enactment thereof and the rules made thereunder and for the time being in force shall apply to the arbitration proceedings under this clause.

The arbitrator may, with the consent of the parties, enlarge the time, from time to time to make and publish his award. The arbitrator shall give reasoned award."

A reading of the above reproduced clause of the agreement shows that all questions and disputes relating to the meaning of the terms and conditions, instructions etcetera arising out of a contract of value of less than Rs.1.00 Crore are required to be referred to the sole arbitrator or the person appointed by Regional Director, SRBC, Chennai. The arbitration clause does not provide for following any particular procedure for reference of the dispute to the arbitrator to be appointed and the only thing required to be seen for appointment of the

arbitrator is whether there exist a dispute or one of the parties has raised the dispute.

The facts of the present case show that a dispute did arise between the parties with reference to the terms and conditions of the contract, the tenure of which had been extended up to 17-8-2002. Therefore, the petitioner Corporation ought to have sent the matter to Regional Director, SRBC, Chennai for nominating an arbitrator. Since the Corporation failed to take action in terms of Clause XIII (A) of the contract, respondent No.1 was left with no choice but to file petition under Section 11 of the Act. In the order passed by him, the learned District Judge referred to the arbitration clause and observed:

> "……..It may be recalled that what is important is that one party should express or by necessary implication asks the other party for appointment of an Arbitrator for the arbitration proceedings to commence. The view expressed by Court of Appeal in Nea Agrex SA's case (supra) is that the demand for invocation of the arbitration clause shall be in writing, but that was a case where the terms of the agreement show that the arbitration clause can be invoked upon the request of one party to the other party in writing. The learned counsel for the petitioners in this case pointed out that such an embargo is not provided by Clause XIII of Ex.A1 contract. He submitted that whether the arbitration clause is invoked by express intimation to the Corporation in writing or by implication, the arbitration clause comes into play. Inter alia, his contention would appear to be that arbitration clause is liable to be invoked even if there was no intimation otherwise by the petitioners to the Corporation merely in view of this case by the petitioners implicitly indicating that the petitioners are invoking the arbitration clause.
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> 12. It, therefore, becomes necessary to examine Clause XIII of Ex.A1. Clause XIII of Ex.A1 consists of arbitration clause. It is in two parts in Part A and Part B. Part A contains the sub-heading as to the procedure to be adopted in case the contract value is less than Rs.1.00 Crore. Part B contains the short of

title that it determines the procedure where the contract value is more than Rs.1.00 Crore. The learned counsel for the Corporation largely depended on Clause XIII (B). Para 3 of Clause XIII (B) envisages that the party desiring the settlement of dispute shall give notice of intimation to go in for arbitration requesting the other party to appoint an arbitrator within 30 days. Through and through, Clause XIII (B) refers to multiple arbitrators. It refers to arbitrators or the third arbitrator. It did not refer to a single arbitrator.

13. The learned counsel for the petitioners contended that Clause XIII (b) is not applicable to the present case since the dispute is only regarding Rs.2.5 lakhs and that Clause XIII (B) is applicable where the contract value is more than Rs.1.00 Crore. I agree with the contention of the learned counsel for the petitioners in this regard. Where Clause XIII consists of two sub-clauses, one dealing with contracts below Rs.1.00 Crore and another dealing with contracts above Rs.1.00 Crore, invariably sub-clause dealing with the contract value of less than Rs.1.00 Crore would apply to the facts of the case. A reading of Clause XIII would show that sub-clauses A and B are mutually exclusive of each other. The terms and conditions of one sub-clause cannot be read as the contentions of the other clause. They shall be looked at individually. I am not able to agree with the contention of the learned counsel for the Corporation that Clause XIII (B) envisages notice in writing and that as the petitioners did not give such a notice in writing, the arbitration clause is deemed to have been waived.

14. There is no whisper in Clause XIII (A) with reference to notice in writing. It merely points out that disputes relating to the contract shall be referred to sole arbitrator appointed by the Regional Director, SRBC, Chennai. Para 3 envisages that Arbitration and Conciliation Act, 1996 and Rules made thereunder are applicable to the arbitration, subject to the conditions under paras 1 and 2 of Clause XIII (A) of Ex.A1. Admittedly, Arbitration and Conciliation Act, 1996 envisages notice in writing when one party intends to invoke the arbitration clause. Where paras 1 and 2 of Clause XIII (A) did not speak of such an embargo, paras 1 and 2 prevail over

Arbitration and Conciliation Act, 1996 in view of para 3 of Clause XIII(A). I, therefore, hold that the claim of the petitioners cannot be rejected on the ground that there was no notice in writing to the Corporation by the petitioners invoking the arbitration clause.

15. There is any amount of case law in this regard. The settled legal position is that it is the arbitrator who shall decide whether there is jurisdiction for the arbitrator to try the matter perhaps as a preliminary point and it is for the arbitrator to decide whether there is an issue referable to arbitration. After Arbitration and Conciliation Act, 1996 came into force, the power of the Court is considerably restrained. The Court can set aside arbitral award only in limited circumstances. Barring for the same, more or less, the arbitrator is the sole authority."

Learned counsel for the petitioner half-heartedly tried to persuade us to quash the order under challenge by arguing that the application filed by respondent No.1 under Section 11 of the Act was not maintainable, but we are not inclined to go into this question because, in our considered view, the order under challenge has not resulted in failure of justice. What the learned District Judge has done is to direct Regional Director, SRBC, Chennai to appoint an arbitrator to go into the dispute between the parties. This is also the purport of the plain language of Clause XIII (A) of the contract. Therefore, we do not find any valid ground to entertain the petitioner's challenge to the impugned order.

With the above observations, the writ petition is dismissed.

As a sequel to dismissal of the writ petition, WPMP.No.30264 of 2005 filed by the petitioner for interim relief is also dismissed.

G.S.SINGHVI, C.J.

3rd November, 2006.

C.V. NAGARJUNA REDDY, J.

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